

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

REX GARD,)	CIV. 18-5040-JLV
)	
Petitioner,)	
)	
v.)	MOTION TO DISMISS
)	PETITIONER'S APPLICATION
)	FOR WRIT OF
BRENT FLUKE, Warden, Mike)	HABEAS CORPUS
Durfee State Prison, and MARTY)	
JACKLEY, Attorney General of the)	
State of South Dakota,)	
)	
Respondents.)	

COMES NOW, the above-named Respondents, by and through the undersigned attorney Quincy Kjerstad, Assistant Attorney General, and hereby moves this Court pursuant to Fed. R. Civ. P. 12(b)(6) and 28 U.S.C. 2244(b) for dismissal of the application for writ of habeas corpus that Petitioner, Rex Gard, filed on June 19, 2018. As shown in the Brief in Support of Motion to Dismiss, which is submitted under separate cover, Petitioner's application must be dismissed in that Petitioner's application is successive and he has failed to obtain an order from the United States Court of Appeals for the Eighth Circuit to present another claim under § 2254.

WHEREFORE Respondents, above named, hereby move the Court for an order dismissing the Petition herein, without any evidentiary or other hearing, and requests that Respondents have all costs, disbursements, and attorney's fees to which they may by law be entitled, and for such other and further relief as may to the Court seem just and equitable.

Dated this 2nd day of August 2018.

Respectfully submitted,

MARTY J. JACKLEY
ATTORNEY GENERAL

/s/ Quincy R. Kjerstad
Quincy R. Kjerstad
Assistant Attorney General
Office of Attorney General
1302 E. Highway 14, Suite 1
Pierre, SD 57501-8501
Telephone (605) 773-3215
E-mail: quincy.kjerstad@state.sd.us

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of August 2018, I electronically filed the Motion and Brief in Support of Motion and exhibits with the Clerk of the Court for the United States District Court for the Western Division by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

I further certify that some of the participants in the case are not CM/ECF users. I have mailed the foregoing documents by First-Class mail, postage prepaid, or have dispatched it to a third-party commercial carrier for delivery within 3 calendar days, to the following non-CM/ECF participants:

Rex Gard #2758
Mike Durfee State Prison
1412 Wood Street
Springfield, SD 57062

/s/ Quincy R. Kjerstad
Quincy R. Kjerstad
Assistant Attorney General